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May 17, 2010

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VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: STB Ex Parte No. 558 (Sub-No. 13)
Railroad Cost of Capital - 2009

Dear Ms. Brown:

In accordance with the decision served on March 30, 2010 in the above referenced proceeding, enclosed is an original of the "Comments Of The Kansas City Southern Railway Company" to be filed in the above referenced proceeding. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

William A Mullins

William A. Mullins

Enclosures

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 558 (SUB-NO. 13)

RAILROAD COST OF CAPITAL -- 2009

COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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Attorneys for The Kansas City Southern
Railway Company

Dated: May 17, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 558 (SUB-NO. 13)

RAILROAD COST OF CAPITAL -- 2009

COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

Pursuant to the decision of the Surface Transportation Board ("STB" or "Board") served March 30, 2010 in Ex Parte No. 558 (Sub-No. 13) (the "Decision"), The Kansas City Southern Railway Company ("KCSR") hereby files its comments. In these comments, KCSR suggests that the Board conduct a separate proceeding, before calculation of the 2010 cost of capital is due to occur, to consider whether to include carriers like KCSR in the "composite railroad' on which the cost of capital is based, in order to make that calculation more representative of the rail industry as a whole.

I. KCSR Joins In and Supports AAR's Comments In This Proceeding

KCSR is a signatory to the comments being filed in this proceeding by the Association of American Railroads ("AAR Comments") and is fully supportive of those comments. KCSR also believes, consistent with footnote 1 of the AAR Comments, that the price of BNSF Railway Company's ("BNSF's") shares should be considered in calculating the 2009 cost of common equity capital. BNSF fully satisfied the criteria for inclusion in the railroad sample for the entire 2009 period, and was not acquired by Berkshire Hathaway until February 2010. Therefore, BNSF should be included as part of the composite railroad for 2009.

II. The Time Is Ripe For The Board To Revisit The Criteria For Including Carriers In The Cost Of Capital Calculation, To Make That Calculation More Representative Of The Rail Industry.

Due to the fact that BNSF constitutes less than 50% of the asset value of its new parent company, under the Board's current standards BNSF apparently will not be included in the Board's cost of capital determination in the future. *See generally* Decision, slip op. at 2 and n. 2. Accordingly, under the current criteria, the cost of capital for the entire rail industry will be calculated on data of only three railroads. KCSR submits that it is time for the Board to consider soliciting comments on whether it would be appropriate to change the criteria used in determining which railroad holding companies are included in the Board's "composite railroad," with an objective of expanding the sample size to make it more representative of the rail industry than just three large railroads.

In determining the rail industry cost of capital, the Board uses the major railroad holding companies to form a "composite railroad" in its determination of an overall industry cost of capital. The selection of the companies to be included in the composite railroad is based on criteria developed in Railroad Cost of Capital -- 1984, 1 I.C.C.2d 989 (1985). These criteria are as follows: (1) the company is listed on either the New York or American Stock Exchange; (2) the company paid dividends throughout the year; (3) if the company itself is not a Class I railroad, the company's rail assets are greater than 50% of its total assets; and (4) the company has a debt rating of at least BBB (Standard & Poor's) and Baa (Moody's).

KCSR's parent holding company, Kansas City Southern ("KCS"), has previously met these criteria and has previously been included in the composite railroad cost of capital calculation; yet, for almost a decade now, KCS has met only some of these criteria and the cost of capital calculation and the formation of the composite railroad has included only Burlington

Northern Santa Fe Corporation ("BNSFC"), CSX Corporation ("CSX"), Norfolk Southern Corporation ("NSC"), and Union Pacific Corporation ("UPC") the holding companies of the four largest U.S.-based carriers. It appears that Canadian National Railway Company ("CN") and Canadian Pacific Railway Limited ("CP") have never been included in the cost of capital calculation. With BNSFC's acquisition by Berkshire Hathaway, neither BNSF nor its new ultimate parent company now meet the criteria for inclusion in the cost of capital calculation, leaving only UPC, CSX and NSC constituting the composite railroad.

Given the future removal of BNSF from the sample size, KCSR asserts that it may be time for the Board to reconsider its criteria utilized for determining which railroad holding companies should constitute the composite railroad. KCSR has often established that the existing cost of capital methodology understates the cost of capital for smaller railroads, such as KCSR. Methodology To Be Employed In Determining The Railroad Industry's Cost of Capital, Ex Parte No. 664 and Simplified Standards For Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1). The understatement effect of the existing methodology could be exacerbated by the removal of BNSFC from the group of companies comprising the composite railroad as that group becomes even less representative of the industry as a whole.

Furthermore, since the criteria were originally developed, the corporate structures of CN and CP have changed dramatically, with each significantly expanding its U.S. domestic presence through acquiring large regional U.S. railroads, including Illinois Central, Wisconsin Central, and Dakota Minnesota & Eastern. KCSR asserts that any cost of capital calculation developed through a composite railroad consisting of the six publicly traded Class I railroads/railroad holding companies - UPC. CSX. NSC. KCS, CP, & CN[1] - would be more representative of an industry wide cost of capital than using an average based only upon the capital structure of UPC. CSX and NSC.

KCSR understands that the current proceeding is not the proper vehicle for the Board to begin the process of changing the criteria utilized to determine which railroads should be included in the cost of capital calculation. However, this is likely the last time that BNSF will be included. Accordingly, before the Board begins its cost of capital calculation for 2010, which will likely happen less than a year from now, it should solicit comments on whether to change the criteria for inclusion in the composite railroad, and then, if appropriate, change that criteria in a timely manner so that the 2010 cost of capital calculation would include any newly adopted changes.

Respectfully submitted,

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May 17, 2010

[1] At this time, KCSR expresses no opinion whether a methodology could be developed to include BNSF in the calculation despite its being less than 50% of its ultimate parent's assets.